



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

November 23, 2005


C&M Total Property Maintenance, Inc.
Attn: Mary Luca, Owner
PO Box 463
Center Conway, NH 03813-2259

Re: Docket No. AF 04-097 – C&M Total Property Maintenance, Inc.

Dear Ms. Luca:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

Michael P. Sclafani,
Legal Assistant

cc: Harry. T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Linda Magoon, DES WD
Bill Thomas, DES WD

C&M Total Property Maintenance, Inc.
PO Box 463
Center Conway, NH 03813-2259

Re: Pequawket Pond, Conway, NH
Wetland Bureau File No. 2004-2259

ADMINISTRATIVE FINE
No. AF 04-097

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division (the "Division") and C&M Total Property Maintenance, Inc., parties to the above captioned matter, and stipulate to the following:

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development in activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Pursuant to RSA 483-B:18, the Commissioner is authorized to impose fines of up to \$5,000 per violation for violations of the CSPA. Pursuant to RSA 483-B:17, the Commissioner has adopted Env-C 611 and certain provisions within Env-C 603 to establish the schedule of fines for such violations.
3. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
4. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
5. Mark Baer is the owner of a parcel of land with frontage on Pequawket Pond in Conway, NH, more particularly identified on Town of Conway Tax Map 227 as Lot 210 ("the Property"). Charles Luca is listed as the Principal of a business registered in New Hampshire as C & M Total Property Maintenance, Inc. ("C & M"). C & M was hired by Mark Baer to conduct work on his property.
6. On December 24, 2004, the Division issued Notice of Proposed Administrative Fine AF 04-097 (the "Notice") to C & M seeking fines totaling \$10,000 for violations of RSA 483-B:9 and RSA 482-A.

7. Specifically, the Notice cited C & M for violating RSA 483-B:9 by failing to maintain a healthy, well-distributed stand of trees, saplings, shrubs, and ground covers within the 150 foot natural woodland buffer zone. Pursuant to Env-C 611.06(c), the Division sought a fine of \$4,000 for this violation.
8. Specifically, the Notice cited C & M for violating RSA 483-B:9 by removing at least three stumps and their root systems which were located within 50 feet of the reference line of a public water of the state. Pursuant to Env-C 611.06(b), the Division sought a fine of \$1,000 per stump, for a total of \$3,000.
9. Specifically, the Notice cited C & M for violating RSA 483-B:9 by failing to install temporary erosion and siltation control measures prior to conducting excavation and earth moving activities. Pursuant to Env-C 603.02(i)(1), the Division sought a fine of \$1,000.
10. Specifically, the Notice cited C & M for violating RSA 482-A by conducting an unauthorized dredge in a public water. Pursuant to Env-C 614.05, the Division sought a fine of \$2,000.
11. In order to settle this matter, the Division and C & M have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
12. Of the total \$10,000 fine sought, \$5,000 shall be suspended contingent on no further violations of the statutes and rules under the purview of NHDES by C & M for a period of two years from the date of execution of this Agreement by the Commissioner of the Department of Environmental Services.
13. C & M agrees to pay the remaining \$5,000 as follows:
 1. \$1,000 upon execution of this Agreement by an authorized representative of C & M; and
 2. \$1,000 every 30 days thereafter until paid in full.
14. Failure of C & M to comply with the terms of this Agreement shall render the suspended portions of the fine due and payable upon notice from DES. If C & M fails to comply with the terms of the Agreement, DES reserves its right to consider referring this violation to the New Hampshire Department of Justice for imposition of civil and criminal penalties.
15. Payments under Paragraph 13 and any payment that becomes due pursuant to Paragraphs 12 and 14 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

16. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

17. By executing this Agreement, C & M waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

18. The effective date of this Agreement will be the date on which it is signed by an authorized representative of C & M and the Director of the Water Division and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date upon which it has been accepted by the Commissioner.

19. No failure by the DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

C & M Total Property Maintenance, Inc.

By: Mary Luca, Owner
Duly authorized

11/14/05
Date

DES WATER DIVISION

for Harry T. Stewart, P.E., Director

11/21/05
Date

This Motion to Accept Settlement agreement is granted this 22nd day of Nov, 2005.

for Michael P. Nolin, Commissioner

Department of Environmental Services